

file

BEFORE THE
STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS

Application of Megal Development Corporation)
for a Permit to Grade in Excess of 10,000)
Square Feet on the Banks of a Tributary to) Case No. 3-SE-95-877
the Menomonee River, Village of Menomonee)
Falls, Waukesha County, Wisconsin)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND PERMIT

Megal Development Corporation applied to the Department of Natural Resources for a permit to grade an area on the bank of a tributary of the Menomonee River. The Department of Natural Resources issued a Notice of Proposed Grading which stated that unless written objection was made within thirty days after publication, the Department might issue a decision on the application without a hearing. Timely objections to the application were received by the Department.

Pursuant to due notice, a hearing was held in Waukesha, Wisconsin on July 18, 1996, before Mark J. Kaiser, Administrative Law Judge.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the parties to this proceeding are certified as follows:

Megal Development Corporation, by

Attorney Michael C. Chmurski
12650 W. Lisbon Road
Brookfield, WI 53005

Wisconsin Department of Natural Resources, by

Attorney Timothy A. Andryk
P. O. Box 7921
Madison, WI 53707

Keith A. Marty
N86 W13691 Irene Drive
Menomonee Falls, WI 53051

FINDINGS OF FACT

1. Megal Development Corporation (Megal or applicant), 12650 West Lisbon Road, Brookfield, Wisconsin 53005, owns real property in the NW 1/4 of the NW 1/4 of Section 12, Township 8 North, Range 20 East, Village of Menomonee Falls, Waukesha County. The property abuts a tributary of the Menomonee River. The tributary is navigable in fact at the site of the proposed project. The parcel owned by Megal is 2.037 acres.

2. Megal filed an application dated December 1, 1995, with the Department of Natural Resources (Department). The application seeks a permit pursuant to sec. 30.19(2), Stats., to grade an area in excess of 10,000 square feet on the banks of the tributary. The Department and Megal have complied with all procedural requirements of sec. 30.02, Stats.

3. The purpose of the grading is to develop the site for construction of a 9946 square foot building and a parking lot. The total area which will be disturbed is 1.70 acres (74,000 square feet). The site of the proposed project is adjacent to a mapped wetland; however, no filling or draining of the wetland area is involved.

4. The area of the Village of Menomonee Falls in which the proposed project will be located has a storm water runoff problem. Keith Marty and two other neighbors who appeared at the hearing had no specific objection to the proposed project.¹ These individuals had a general concern that the creation of additional impervious surfaces in the area will exacerbate the storm water runoff problem. The applicant presented evidence at the hearing that the project design includes "Controlled Flow Drainage."

Controlled Flow Drainage is a water retention system which slows the flow of storm water from the property. Use of Controlled Flow Drainage means the proposed project will not result in a worsening of the storm water runoff problem. Additionally, the applicant has agreed to modify the proposal by moving four parking stalls and redirect the outfall to the northwest, into the wetlands and away from the homes of the objectors.

¹After Megal presented its case, the two other neighbors withdrew their objections to the proposed project.

5. The proposed project will not injure public rights or interest, including fish and game habitat, upon compliance with conditions in the following permit.

6. The proposed project will not adversely affect water quality or cause environmental pollution as defined in sec. 144.01(3), Stats., upon compliance with conditions in the following permit.

7. The Department has complied with the procedural requirements of sec. 1.11, Stats., and Ch. NR 150, Wis. Adm. Code, regarding assessment of environmental impact.

CONCLUSIONS OF LAW

1. The proposed grading is in excess of 10,000 square feet on the bank of a navigable stream. Accordingly, a permit pursuant to sec. 30.19(2), Stats., is required.

2. The Division of Hearings and Appeals has authority under secs. 30.19 and 227.43(1)(b), Stats., and in accordance with the foregoing Findings of Fact, to issue the following Permit subject to the conditions specified below.

3. The proposed project is a type IV action pursuant to sec. NR 150.03(8)(f)2, Wis. Adm. Code. Type IV actions do not require the preparation of an environmental impact statement or assessment.

PERMIT

AND THERE HEREBY DOES ISSUE AND IS GRANTED to the applicant, a permit under sec. 30.19(2), Stats., for the grading as described in the application and in the foregoing Findings of Fact, subject, however, to the conditions that:

1. You must notify Water Management Specialist Marty Johnson, P. O. Box 12436, Milwaukee, Wisconsin 53212 (phone 414-263-8680) before starting construction and again not more than 5 days after the project is complete.

2. You must complete the project as described on or before October 15, 1997. You may not begin or continue construction after this date unless the Department grants a new permit or permit extension in writing.

3. This permit does not authorize any work other than what you specifically describe in your application and plans (hearing exhibit 1), and as modified by the conditions

of this permit. If you wish to alter the project or permit conditions, you must first obtain written approval of the Department.

4. You are responsible for obtaining any permit or approval that may be required for your project by local zoning ordinances or by the U. S. Army Corps of Engineers before starting your project.

5. You must allow free and unlimited access to your project site at any time to any Department employee who is investigating the project's construction, operation, or maintenance.

6. The Department may modify or revoke this permit if the project is not completed according to the terms of the permit, or if the Department determines the activity is detrimental to the public interest.

7. You must keep a copy of this permit and approved plans at the project site at all times until the project is complete.

8. Your acceptance of this permit and efforts to begin work on this project signify that you have read, understood and agreed to follow all conditions of this permit.

9. Any area where topsoil is exposed during construction shall be immediately seeded and mulched or riprapped to prevent soil from being eroded and washed into the waterway.

10. No portion of the bank or upland which is altered or disturbed and, as a result, unstable may remain unprotected for more than 7 days. Erosion matting will be placed on all slopes adjacent to the wetland area.

11. Prior to any rain event, or if the site is to remain unoccupied for longer than 24 hours, appropriate temporary measures such as straw beds and silt fences shall be put in place.

12. Erosion control measures such as silt fence and straw bales must meet or exceed the standards in the Wisconsin Construction Site Best Management Practices Handbook.

13. Erosion control measures must be inspected, and any necessary repairs or maintenance performed, after every rainfall exceeding 1/2 inch and at least once per week.

14. Riprap must be installed at the mouth of the outfall. The riprap size must be no less than 12" in diameter.

15. You must not remove vegetative cover until immediately before starting excavation.

16. You are not allowed to do construction during periods of high flow or between October 15, 1996 and April 15, 1997. The site must be stabilized with vegetation and/or erosion matting with seeding by October 15, 1996.

17. As per the revised plans submitted to the Department on 7/3/96, the outfall shall be redirected to the northwest and four parking stalls will be relocated to the southeast portion of the parcel.

Dated at Madison, Wisconsin on July 23, 1996.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By Mark J. Kaiser
MARK J. KAISER
ADMINISTRATIVE LAW JUDGE

NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Natural Resources a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefor in accordance with the provisions of sec. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.